

## **The complaint**

Mr B complains about the quality of a car he acquired under a conditional sale agreement ("agreement") with Moneybarn No. 1 Limited trading as Moneybarn ("Moneybarn").

## **What happened**

In November 2022 Mr B entered into an agreement with Moneybarn for a used car costing £9,275. Under the terms of the agreement, everything else being equal, Mr B undertook to make a deposit payment of £98 followed by 59 monthly payments of £288.03 - making a total sum repayable of £17,091.77 at an APR of 31.9%.

In May 2023 Mr B complained to Moneybarn about the quality of the car he had acquired and to say it had developed a number of faults.

In July 2023 Mr B referred his complaint to our service.

In August 2023 a company that I will call "A" inspected, at Moneybarn's request, Mr B's car. It concluded that although there were faults with the car these weren't likely to have been present or developing at the time of acquisition.

In August 2023 Moneybarn issued Mr B with a final response letter ("FRL"). Under cover of this FRL Moneybarn said it wasn't persuaded the car had faults, or was developing faults, at the time of acquisition and as a result it wasn't upholding Mr B's complaint.

Mr B's complaint was considered by one of our investigators who came to the view that it shouldn't be upheld.

Mr B didn't agree with the investigator's view so his complaint has been passed to me for review and decision.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I can confirm that I've come to the same overall conclusion as the investigator and for broadly the same reasons.

I'm very aware that I've summarised this complaint above in far less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Secondly, I would add that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.

In considering this complaint I've had regard to the relevant law and regulations, any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr B acquired a car under a conditional sale agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

The Consumer Rights Act 2015 ("CRA") says, amongst other things, that the car should've been of a satisfactory quality when acquired. And if it wasn't, as the supplier of goods, Moneybarn are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the car's history.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was acquired, unless Moneybarn can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr B to show it was present when the car was acquired.

So, if I thought the car was faulty when Mr B acquired it, and this made the car of unsatisfactory quality, it'd be fair and reasonable to ask Moneybarn to put this right.

Now I don't dispute that Mr B has had repairs undertaken on the car at his own cost and that the car is currently off the road due to one or more faults with it and because it doesn't have a current and valid MOT test certificate. But this doesn't mean that Moneybarn is obliged to accept rejection of the car, pay for any further repairs that might be needed or refund Mr B the costs he has incurred in having one or more repairs undertaken on the car at his own volition.

Mr B acquired a used car that was approximately seven years old and which had travelled over 71,000 miles. A car of this age and mileage wouldn't be expected to be in the same condition as a brand new car, which would have cost considerably more than the price Mr B paid. Considering the age and mileage here it wouldn't be unreasonable to expect the car to be showing some signs of wear and tear.

Furthermore at the time of Mr B contacting Moneybarn in May 2023 to complain about the quality of the car it was approximately six months older and Mr B had been able to travel 3,500 miles in it.

This, together with the nature of the faults Mr B has complained about, A's inspection report, the lack of any report from Mr B suggesting the faults with the car were present or developing at the time of acquisition and that the car passed an MOT test in May 2022 with no advisories (other than in respect of tyre tread depth) I'm satisfied, on the balance of probabilities, Mr B didn't acquire a car in November 2022 that was of unsatisfactory quality.

For the sake of completeness I would add that I've not discounted Mr B's submission that he had to have repairs undertaken on the car at his own cost, which may or may not have been successful, before he complained to Moneybarn in May 2023. But as Moneybarn pointed out under cover of its FRL there is no way now of establishing whether these repairs were required as a result of the car being of unsatisfactory quality when acquired by Mr B so it wouldn't be fair for me to direct Moneybarn to refund Mr B the cost of these repairs.

### **My final decision**

My final decision is I don't uphold this complaint. However, I would remind Moneybarn No. 1 Limited trading as Moneybarn of its obligation to treat Mr B – if he is in financial difficulties – fairly and with due consideration and forbearance going forward.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 December 2023.

Peter Cook  
**Ombudsman**